

## REMARKS

Applicants wish to thank the Examiner for reviewing the present patent application. All amendments are made in compliance with 35 USC §132, and support for such amendments may be found, among other places, at page 5 of the specification as originally filed.

### I. Rejection Under 35 USC §102(a)

The Examiner has rejected claims 1-2, 4-6, 11, 15 and 16 under 35 USC §102(a) as being anticipated by Knueven, U.S. Patent No. 6,620,445 (hereinafter, '445). In the rejection, the Examiner mentions, in summary, that the '445 reference discloses a lemonade composition containing water and alkali metal bisulfate. The Examiner further mentions that sodium bisulfate has a pKa of 1.99 and no citric acid is seen in the composition disclosed. In view of this, the Examiner believes that the anticipatory rejection

Under 35 USC §102(a) is warranted.

Notwithstanding the Examiner's apparent position to the contrary, it is the Applicants' position that the presently claimed invention is patentably distinguishable from the above-described for at least the following reasons.

While Applicants disagree with the rejection made under 35 USC §102(a), Applicants have amended the claims in order to further business objectives and to expedite the prosecution of the present patent application. Independent claim 1 has now been amended such that the beverage composition is one which is tea containing. Since the

'445 reference merely describes alkali metal bisulfates as acidulants in foods like baked goods, beverages and candies where the beverages are dietetic drinks, fruit juice drinks and sport drinks, all the important and critical limitations set forth in the presently claimed invention are not found in a single reference, namely the '445 reference. The '445 reference does not, even remotely, describe a beverage or a method for making a beverage that is tea containing as well as tea solid containing.

Since all of the important and critical limitations set forth in the presently claimed invention, as now amended, are not found in the '445 reference, Applicants respectfully request that the rejection made under 35 USC §102(a) be withdrawn and rendered moot.

## II. Rejection Under 35 USC §102(a)

The Examiner has rejected claims 1, 6, 10, 11 and 16 under 35 USC §102(a) as being anticipated by Hu, Y et al., XP-002315839 (hereinafter, '839 and abstract only). In the rejection, the Examiner mentions, in summary, that the '839 abstract discloses a composition containing minerals, pure water, juice and hydrochloric acid (as in claims 1, 6, 10, 11 and 16). In view of this, the Examiner believes that the novelty rejection of the claims based on the '839 abstract is warranted.

Notwithstanding the Examiner's apparent position to the contrary, it is the Applicants' position that the presently claimed invention (as now amended) is patentably distinguishable from the above-described for at least the following reasons.

Independent claim 1 is directed to a beverage comprising water, a monoprotic antimicrobial agent having a  $pK_a$  of less than about 2.6, or a polyprotic antimicrobial agent having a  $pK_{a1}$  of less than about 2.6 and a  $pK_{a2}$  of less than about 3 or greater

than about 6 or both; and at least about 0.01% by weight tea solids where the beverage is substantially free of citric acid.

Since the '839 abstract merely mentions the preparation of concentrate containing mineral elements where the concentrate may be mixed with pure water, beverage, juice and food to produce beverages and foods containing mineral elements, it is clear that all the important and critical limitations now set forth in the presently claimed invention as now amended are not even remotely found in the '839 abstract. The '839 abstract is not directed to a beverage with tea solids. Therefore, Applicants respectfully request that the novelty rejection based under 35 USC §102(a) be withdrawn and rendered moot.

### III. Rejection Under 35 USC §102(a)

The Examiner has rejected claims 1, 2, 4 and 6 under 35 USC §102(a) as being anticipated by Prepared Foods. In the rejection, the Examiner mentions that Prepared Foods discloses the limitations of claims 1, 2, 4 and 6 and that it is known to use sodium acid sulfate in beverages containing tea. In view of this, the Examiner believes that the rejection made to such claims is warranted.

Notwithstanding the Examiner's apparent position to the contrary, it is the Applicants' position that the presently claimed invention is patentably distinguishable from the above-described for at least the following reasons.

As already made of record, the present invention, as set forth in independent claim 1 as now amended, is directed to a beverage comprising water and a monoprotic or polyprotic antimicrobial agent, or both. The beverage of claim 1 is also one which

comprises at least about 0.01% by weight tea solids. Since Prepared Foods only describes beverages that have flavors which include banana, chocolate, coconut, cola, coffee, mocha, tea, toffee and vanilla, there is nothing in Prepared Foods that even remotely suggest that the claimed antimicrobial system can be used in a beverage composition that has tea solids at a level of at least about 0.01%. In view of this, all the important and critical limitations set forth in the presently claimed invention as now amended are not even remotely found in Prepared Foods. Therefore, Applicants request that the Examiner withdraw the rejection and render it moot.

#### IV. Rejection Under 35 USC §103

The Examiner has rejected claims 1, 13, 14, 15, 17, 19 and 20 under 35 USC §103 as being unpatentable over Wei et al. , U.S. Patent No. 7,060,301 in view of Kneuvan, U.S. Patent No. 6,620,445 and Hu, Y. et al., XP 0023158389 (hereinafter, '301, '445, and '839, respectively). In the rejection, the Examiner mentions, in summary, that the '301 reference discloses an antimicrobial composition which can be used in beverages.

The Examiner further mentions, in summary, that no citric acid is used in the beverages described in the '445 reference or the beverage described in the '839 abstract. In view of this, the Examiner believes that the obviousness rejection is warranted.

Notwithstanding the Examiner's apparent position to the contrary, it is the Applicants' position that the presently claimed invention is patentably distinguishable from the above-described for at least the following reasons.

As already made of record, independent claim 1 is directed to a beverage composition comprising water, antimicrobial agent and at least about 0.01% tea solid by weight.

The beverage composition described in independent claim 1 is also one that is substantially free of citric acid.

Independent claim 17 is directed to a method for making a microbiologically stable beverage composition whereby the beverage is made by mixing water and acidulant to produce a mixture and thermally treating the mixture at a temperature from about 80°C to about 95°C to produce the microbiologically stable beverage where the acidulant is monoprotic and has a pKa of less than about 2.6 or is polyprotic and has a pKa<sub>1</sub> of less than about 2.6 or a pKa<sub>2</sub> of less than about 3 or greater than about 6 such that the beverage is tea containing with at least about 0.01% by weight tea solids.

The '301 reference is merely directed to in situ mono- or diester dicarboxylate containing compositions that can reduce the population of microbes on various surfaces found in food, beverage, or pharmaceutical processing facilities. The '301 reference is not even remotely directed to a beverage. For the reasons already stated on record, the '445 reference is not directed to tea beverages with specific amounts of tea solids and the '839 abstract is not directed to a tea composition having a certain level of tea solids. Therefore, the combination of references relied on by the Examiner does not, even remotely suggest the inventions as now claimed and amended. Therefore, Applicants respectfully submit that the obviousness rejection is misplaced and should be withdrawn and rendered moot.

#### V. Rejection Under 35 USC §103

The Examiner has rejected claims 7, 8, 9, 10, 11 and 12 under 35 USC §103 as being unpatentable over Prepared Foods in view of Wei et al, U.S. Patent No. 7,060,301 (hereinafter, '301). In the rejection, the Examiner mentions that Prepared Foods

Notwithstanding the Examiner's apparent position to the contrary, it is the Applicants' position that the presently claimed invention is patentably distinguishable from the above-described for at least the following reasons.

As already made of record, independent claim 17 is directed to a method for making a microbiologically stable beverage whereby the beverage comprises an acidulant which is monoprotic or polyprotic and the beverage is tea-containing with at least about 0.01% by weight tea solids. Dependent claim 18 further defines independent claim 17 by defining the beverage as one which is tea containing and that comprises from about 0.01 to about 1.5% by weight tea solids. Again, and as already made of record, Prepared Foods is not directed to tea compositions comprising tea solids but merely directed to flavored beverages. The '301 reference is only directed to antimicrobial compositions that can be used to reduce microbes on various surfaces in facilities with foods, beverages or pharmaceuticals. In view of this, it is clear that the combination of references relied on by the Examiner does not, even remotely, suggest the inventions set forth in independent claim 17 and 18 as now amended. Therefore, Applicants respectfully request that the obviousness rejection be withdrawn and rendered moot.

#### VII. Rejection Under 35 USC §103

The Examiner has rejected claim 3 under 35 USC §103 as being unpatentable over Kneeven, U.S. Patent No. 6,620,445 (hereinafter, '445) as applied to claims 1-2, 4-6, 11, 15 and 16 and further in view of Selsted et al., U.S. Patent No. 5,324,716 (hereinafter, '716). In the rejection, the Examiner mentions, in summary, that the '716 reference discloses that it is known to use tryptophan-rich peptides exhibiting antimicrobial activity in foods. In view of this, the Examiner believes it would have

obvious to use an amino acid containing microbial composition in a beverage as shown by the '716 reference.

Notwithstanding the Examiner's apparent position to the contrary, it is the Applicants' position that the presently claimed invention is patentably distinguishable from the above-described for at least the following reasons.

As already made of record, independent claim 1, as now amended, is directed to a beverage comprising water, antimicrobial agent and tea solids wherein the tea solids make up at least about 0.01% by weight of the beverage and further wherein the beverage is substantially free of citric acid. Dependent claim 3 further defines claim 1 by defining the type of polyprotic antimicrobial agent that may be used within the beverage.

In contrast, and as already made of record, the '445 reference is not directed to tea beverages that have a particular amount of tea solids. The '716 reference is merely directed to an isolated broad spectrum of antimicrobial peptide compounds having a particular amino acid sequence. There is no teaching whatsoever in the '716 reference that suggests the tryptophan-rich peptide can be used to stabilize a beverage with tea wherein the tea beverage has a particular amount of tea solids. In view of this, it is clear that all the important and critical limitations set forth in the presently claimed invention are not found in the combination of references relied on by the Examiner. In view of this, Applicants respectfully request that the obviousness rejection be withdrawn and rendered moot.

Applicants submit that all claims of record are now in condition for allowance. Reconsideration and favorable action are earnestly solicited.

discloses that it is known to use sodium acid sulfate with tea and that all other parameters which include tea solids and pH values would have been obvious to the skilled artisan. It is unclear in this rejection how the Examiner is relying on the '301 reference.

Nevertheless, for the reasons made of record, independent claim 1 is directed to a beverage that comprises water, antimicrobial agent and at least about 0.01% by weight tea solids, all of which is in a system that is substantially free of citric acid. Prepared Foods only mentions flavored beverage that can have tea flavor. The reference does not, even remotely, suggest tea beverages with tea solids. Moreover, the '301 reference is merely directed to compositions that can reduce the population of microbes on various surfaces in facilities associated with the food, beverage or pharmaceutical industry. In view of this, it is clear that all the important and critical limitations set forth in the presently claimed invention, as now amended, are not even remotely described in the combination of references relied on by the Examiner. Therefore, Applicants respectfully request that the obviousness rejection be withdrawn and rendered moot.

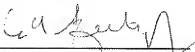
#### VI. Rejection Under 35 USC §103

The Examiner has rejected claim 18 as being unpatentable over Prepared Foods as applied to claims 7, 8, 9, 10, 11 and 12 and further in view of Wei et al., U.S. Patent No. 7,060,301 (hereinafter, '301). In the rejection, the Examiner mentions, in summary, that the '301 reference discloses that it is known to heat treat a beverage to effectively kill germs. In view of this, the Examiner believes that the obviousness rejection is warranted.



In the event the Examiner has any questions concerning the present patent application, the Examiner is kindly invited to contact the undersigned at her earliest convenience.

Respectfully submitted,



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